

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2001-330-T - ORDER NO. 2001-1141

DECEMBER 21, 2001

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| IN RE: Application of Charleston Portable Storage, |) | ORDER DENYING |
| LLC, 7381 Spartan East Boulevard, |) | PETITION FOR |
| Charleston, South Carolina 29418 for a Class |) | DECLARATORY ORDER |
| E Certificate of Public Convenience and |) | AND GRANTING CLASS |
| Necessity. |) | E CERTIFICATE |

This matter comes before the Public Service Commission of South Carolina (the Commission) on the matter of Charleston Portable Storage, LLC's (Charleston's or the Company's) Petition for a Declaratory Order that states that the services Charleston provides relating to household goods are not regulated by the Commission. In the alternative, Charleston is applying for a Class E Certificate of Public Convenience and Necessity to transport household goods between points and places in Charleston, Berkeley and Dorchester Counties restricted to delivery of empty 16'x8'x8' and 12'x8'x8' PODS proprietary containers to shipper origins, loading by shipper and pickup and delivery of shipper-loaded containers subsequently delivered from warehouse to shipper destinations.

We would note that a Notice of Filing was published one time regarding the Application for Certificate in newspapers of general circulation in accordance with the instructions of the Executive Director of the Commission. The Company filed proof of publication. No Protests or Petitions to Intervene were filed. Accordingly, a hearing on

both the Petition for Declaratory Order and the Certificate was held on November 29, 2001 at 10:30 AM, with the Honorable William Saunders presiding. The Company was represented by David Popowski, Esquire. The Commission Staff was represented by F. David Butler, General Counsel. Charleston presented the testimony of David Blake, Russell Houston, Patricia Kendle (by deposition) and David Mikulski. The Commission Staff presented no witnesses.

With regard to the Company's Petition for Declaratory Order, the Company asserts several grounds for the proposition that its services relating to household goods are not regulated by the Commission. Charleston Portable Storage furnishes large portable containers called "PODS" (Portable on Demand Storage) to persons at their homes or businesses for storage of any items that they deem appropriate, including household goods. Once loaded by the householders, the PODS are then transported by the Company to either a storage facility, or to other locations, including residences. The PODS are also unpacked by the individual homeowners, and not the Company.

Charleston notes that under the Federal scheme for interstate moves, such activities as carried out by the Company are not regulated. Counsel for Charleston asserts that the Company's activities should not be regulated by the State of South Carolina on an intrastate basis, either. First, Charleston points out that the Federal and South Carolina definitions of "household goods" are the same, and, therefore, if the transportation of the PODS is not regulated at the Federal level, it should not be regulated at the State of South Carolina level. Second, Charleston points to a letter from FMCSA of June 13, 2001 which quotes a 1939 ruling of the Interstate Commerce Commission (ICC) which states

that general commodities carriers carrying household goods are not subject to ICC household goods regulations unless they perform services typical of a household goods carrier. The Company also cites the 1956 American Red Ball ICC decision for a similar proposition. Counsel for Charleston Portable Storage also points to a letter from the General Counsel of the Illinois Public Service Commission, which used the American Red Ball decision to declare that the Illinois Commission had no authority to regulate a POD-like Company, along with the fact that that Commission had had no complaints about that particular activity.

There are several problems with these theories. First, it is clear to this Commission that the Company is not a general commodities carrier carrying household goods. The service is promoted to, among other potential customers, homeowners for storage and/or movement of their household goods. Second, there is no Court authority cited for non-regulation of this type of movement of household goods, only letters from Federal and State officials and ICC authority, none of which do we find persuasive. It is clear to this Commission, that when the PODS in question are moved by truck after being packed by householders, there is a movement of household goods under our State statutes that requires a Class E Certificate of Public Convenience and Necessity. See S.C. Code Ann. Section 58-23-20 (Supp. 2000). We believe that it is in the public interest to regulate this type of transportation of household goods. Two other states presently regulate the movement of household goods in PODS.

In addition, we would note that the Company, in its testimony, did not demonstrate that its services should be exempt from Commission jurisdiction. Company

witness Houston testified that the Company is prepared to obtain cargo and liability insurance like a regular household goods carrier. Also, parenthetically, the witness testified that it would not be burdensome for this Commission to regulate the Company. Accordingly, the Petition for Declaratory Order is denied, since regulation by this Commission is appropriate for this Company, and is in the public interest.

In the alternative, Charleston filed an Application for a Class E Certificate of Public Convenience and Necessity for the transportation of household goods as described above. Testimony was presented by four witnesses.

David Blake of PODS, Inc. testified. PODS stands for Portable On Demand Storage. The Company originated in 1998 in Clearwater, Florida, and presently does business in thirteen (13) different states. Blake testified that people may use the PODS to store and ship their household goods, and that, in addition to every day use; the PODS are very useful in disaster areas. He also stated that the company had received some 71 telephone calls expressing interest in the proposed service in the Charleston area.

Russell Houston, the franchise owner in Charleston, also testified. He noted that he had 36 PODs in his possession, 12-12 foot PODS and 24-16 foot PODS. Houston testified that he will have three employees upon startup of the business. We have examined the Company's equipment and financial status and are satisfied that these are favorable, along with Mr. Houston's past experience. There are no judgments against the Company.

Patricia Kendle testified by deposition. Ms. Kendle, a realtor in the Charleston area, stated that there is a real need for PODS for both the storage and movement of

household goods between points and places in Berkeley, Dorchester and Charleston Counties.

Finally, David Mikulski testified that, as an acquirer of property in the Summerville area, he has occasion to deal with moving and storage issues in the area. Mikulski testified that there is a need for the services of the Company in the three county area.

South Carolina Code Ann. Section 58-23-590(C)(Supp. 2000) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

Upon consideration of the matter, we find that the Applicant Charleston Portable Storage has demonstrated that it is fit, willing, and able to perform the services sought by its Application. The testimony of Company witness Houston reveals that Charleston is fit, willing, and able under the standards contained in 26 S.C. Regs. 103-133. Further, we find that the testimony of all the witnesses indicate that the proposed service is required by the present public convenience and necessity.

Based upon the record before the Commission and the statutory requirements along with the guidelines contained in the Commission's regulations, we find sufficient evidence to grant the application and therefore grant authority to Charleston Portable

Portable Storage, LLC a Class E Certificate of Public Convenience and Necessity for the movement of household goods as follows:

Household Goods, As Defined in R. 103-210(1):

Between points and places in Charleston, Berkeley and Dorchester Counties restricted to delivery of empty 16'8'8" and 12'x8'x8" PODS proprietary containers to shipper origins, loading by shipper, and pickup and delivery of shipper-loaded containers to shipper destinations or a warehouse with shipper-loaded containers subsequently delivered from warehouse to shipper destinations.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The Petition for Declaratory Order is denied.
2. The application of Charleston Portable Storage, LLC for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods as described above.
3. Charleston Portable Storage, LLC shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

4. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Charleston Portable Storage, LLC authorizing the motor carrier services granted herein.

5. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)